

(A)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

ROGERIO DIAZ

CASE # 08CV 3797

v

ERIC WILSON

08CV 3797

FILED  
JUL 21 2008  
JUL 21 2008 MB

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT ROGERIO DIAZ APPEALS TO THE SEVENTH CIRCUIT COURT OF APPEALS THE FINAL ORDER OF HON. JOAN H. LEFKOW WHICH COVERS UP THE ILLEGAL ARREST AND ILLEGAL DETENTION OF SAID ROGERIO DIAZ IN HAMMOND, INDIANA (SEE EXHIBITS ATTACHED TO PETITION).

THE APPELLANT, ROGERIO DIAZ ALSO PRAYS THAT THE ORDER APPEALED FROM DATED JULY 11, 2008 BE IMMEDIATELY TRANSMITTED TO THE 7<sup>TH</sup> CIRCUIT JUDICIAL COUNSEL WITH A COPY OF THE RECORD ON APPEAL PURSUANT TO 28 USC 1291 AND 28 USC 378 ET SEQ FOR CONSIDERATION BY THE 7<sup>TH</sup> CIRCUIT FOR JUDICIAL MISCONDUCT.

ROGERIO DIAZ STATES BASED UPON THE PETITION, ITS CONTENTS, THE REPORTS OF THE DEA, SHOWING THE CASE TO BE A HAMMOND

CASE FOR 1/2 Kilo of Cocaine, NOT A  
CHICAGO CASE. (480 GRAMS)

APPELLANT REQUESTS APPOINTMENT OF  
COUNSEL ON THIS APPEAL, AS HE IS INDIGENT.

RESPECTFULLY SUB:

*Rogelio Diaz*  
Rogelio Diaz  
71 W. VAN BUREN ST  
CHICAGO IL 60604

JUL 16, 2008

SEE EVIDENCE ATTACHED

U.S. Department of Justice  
Drug Enforcement Administration

<b>REPORT OF INVESTIGATION</b>  <i>(Continuation)</i>	1. File No. 11-08-0002	2. G-DEP Identifier WAC1L
	3. File Title DIAZ, Rogelio	
4. Page 2 of 2	6. Date Prepared 10/09/07	
5. Program Code		

Division where it was processed as evidence by TFO Healy as witnessed by TFO Kowalski. Exhibit N-29 was forwarded to the DEA/CFD Non Drug Evidence Custodian for storage and safekeeping.

# INDEXING

1. DIAZ, Rogelio - NADDIS Negative; sex: male; race: Hispanic; dob: [REDACTED] address: 6427 Jefferson Hammond, Indiana; SSN: [REDACTED] FBI: 146440EA9; - DIAZ was arrested on 10-02-2007 for Conspiracy to Distribute ten kilograms of cocaine to a DEA confidential source. [REDACTED] DIAZ's source of supply. Agents also conducted a consent search of DIAZ's residence, located at 6427 Jefferson, Hammond, Indiana, and recovered an additional 480 grams of cocaine.

**SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET**

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 08cv3797

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Rogelio Diaz (appellant)	Eric Wilson (appellee)
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(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Rogelio Diaz	Name	N/A
Firm	PRO SE #22498-424	Firm	
Address	Metropolitan- MCC 71 West Van Buren Chicago, IL 60605	Address	
Phone	n/a	Phone	

Other Information			
District Judge	Lefkow	Date Filed in District Court	7/2/08
Court Reporter	B. Wilson (5885)	Date of Judgment	7/15/08
Nature of Suit Code	530	Date of Notice of Appeal	7/21/08

COUNSEL:

Appointed

☐

Retained

☐

Pro Se

☒

FEE STATUS:

Paid

☐

Due

☐

IFP

☒

IFP Pending

☐

U.S.

☐

Waived

☐

Has Docketing Statement been filed with the District Court Clerk's Office?

Yes

☐

No

☒

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted

☐

Denied

☐

Pending

☐

If Certificate of Appealability was granted or denied, date of order: \_\_\_\_\_

If defendant is in federal custody, please provide U.S. Marshall number (USM#): \_\_\_\_\_

**IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01**

## Additional Counsel

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name		Name	
Firm		Firm	
Address		Address	
Phone		Phone	

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name		Name	
Firm		Firm	
Address		Address	
Phone		Phone	

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name		Name	
Firm		Firm	
Address		Address	
Phone		Phone	

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name		Name	
Firm		Firm	
Address		Address	
Phone		Phone	

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name		Name	
Firm		Firm	
Address		Address	
Phone		Phone	

## United States District Court, Northern District of Illinois



Name of Assigned Judge or Magistrate Judge	Joan H. Lefkow	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	08 C 3797	DATE	JUL 11 2008
CASE TITLE	Diaz vs. Wilson		

## DOCKET ENTRY TEXT

Petitioner's motion to proceed *in forma pauperis* [3] is granted. Petitioner's petition for *habeas corpus* [1] is summarily dismissed pursuant to Rules 1(b) and 4 of the Rules Governing Section 2254 Cases.

FILED  
JUL 14 PM 3:27  
CLERK  
DISTRICT COURT

*Joan H. Lefkow*

■ [ For further details see text below.]

Docketing to mail notices.

## STATEMENT

Petitioner, Rogelio Diaz, brings this *pro se* petition for a writ of *habeas corpus*. Petitioner seeks to file his petition *in forma pauperis*. Petitioner is indigent and the Court grants his motion to proceed *in forma pauperis*.

On January 10, 2008, Petitioner was charged, by indictment, in the United States District Court for the Northern District of Illinois (Case No. 07 CR 653), with conspiracy to knowingly and intentionally possess with intent to distribute and to distribute a controlled substance, namely, in excess of five kilograms of mixtures containing cocaine, in violation of 21 U.S.C. § 841(a)(1). On January 15, 2008, Petitioner pled not guilty and a jury trial was scheduled for August 25, 2008. On July 2, 2008, Petitioner filed the instant petition for writ of *habeas corpus* regarding Case No. 07 CR 653 and an application to proceed *in forma pauperis*. Based on Petitioner's indigence, Petitioner's application to proceed *in forma pauperis* is granted.

Petitioner brings his habeas petition pursuant to 28 U.S.C. § 2241 regarding Case No. 07 CR 653. To be eligible for habeas corpus relief under Section 2241, a federal pretrial detainee must first exhaust other available remedies. *See, e.g., Jones v. Perkins*, 245 U.S. 390, 391-92 (1918) ("It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and habeas corpus should not be granted in advance of a trial."); *Riggins v. United States*, 199 U.S. 547, 550-51 (1905) (vacating order granting habeas relief when pretrial detainees filed habeas petitions before "invok[ing] the action of the Circuit Court upon the sufficiency of the indictment by a motion to quash or otherwise"); *Fassler v. United States*, 858 F.2d 1016, 1018-19 (5th Cir. 1988) (per curiam) (stating that defendants cannot use § 2241 to challenge pretrial detention orders that can be challenged under 18 U.S.C. § 3145); *United States v. Pipito*, 861 F.2d 1006, 1009 (7th Cir. 1987) (same). In the instant petition, Petitioner attacks his arrest and pre-trial detention. These are issues that Petitioner may pursue during his pending criminal case, *see United States v. Alhalabi*, 443 F.3d 605, 610-12 (7th Cir. 2006); *United States v. Bjorkman*, 270 F.3d 482, 492 (7th Cir. 2001).

**STATEMENT**

Accordingly, after preliminary review, the Court summarily dismisses the petition for a writ of *habeas corpus* pursuant to Rules 1(b) and 4 of the Rules Governing Section 2254 Cases.

APPEAL, KEYS, TERMED

**United States District Court**  
**Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:08-cv-03797**  
**Internal Use Only**

Diaz v. Wilson  
Assigned to: Honorable Joan H. Lefkow  
Cause: 28:2241 Petition for Writ of Habeas Corpus

Date Filed: 07/02/2008  
Date Terminated: 07/11/2008  
Jury Demand: None  
Nature of Suit: 530 Prisoner: Habeas  
Corpus  
Jurisdiction: U.S. Government Defendant

**Petitioner****Rogelio Diaz**

represented by **Rogelio Diaz**  
#22498-424  
Metropolitan – MCC  
71 West Van Buren  
Chicago, IL 60605  
PRO SE

V.

**Respondent**

**Eric Wilson**  
Warden

Date Filed	#	Docket Text
07/02/2008	<u>1</u>	RECEIVED Petition and 0 copies by Rogelio Diaz. (jmp, ) (Entered: 07/03/2008)
07/02/2008	<u>2</u>	CIVIL Cover Sheet. (jmp, ) (Entered: 07/03/2008)
07/02/2008	<u>3</u>	MOTION by Petitioner Rogelio Diaz for leave to proceed in forma pauperis. (jmp, ) (Entered: 07/03/2008)
07/02/2008	<u>4</u>	POST MARKED envelope for initiating document by Rogelio Diaz (Document not scanned) (aew, ) (Entered: 07/07/2008)
07/10/2008	<u>5</u>	MOTION by Petitioner Rogelio Diaz to show cause &to appoint counsel. (jmp, ) (Entered: 07/14/2008)
07/11/2008	<u>6</u>	MINUTE entry before the Honorable Joan H. Lefkow: Petitioner;s Motion to proceed in forma pauperis <u>3</u> granted. Petitioner's petition for habeas corpus <u>1</u> is summarily dismissed pursuant to Rules 1(b) and 4 of the Rules Governing Section 2265 Cases. Mailed notice (jmp, ) (Entered: 07/15/2008)
07/11/2008		(Court only) ***Civil Case Terminated. (jmp, ) (Entered: 07/15/2008)
07/21/2008	<u>7</u>	NOTICE of appeal by Rogelio Diaz regarding orders <u>6</u> ifp granted. (air, ) (Entered: 07/25/2008)